

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15213 of Joseph A. Reyes, as amended, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 350.4) to allow office use of all floors in the R-5-C District at premises 1631 16th Street, N.W., (Square 193, Lot 807).

HEARING DATE: January 17, April 11, July 18, and
September 19, 1990
DECISION DATE: October 3, 1990 and November 7, 1990

ORDER

PROCEDURAL MATTERS:

The applicant was initially scheduled for public hearing on January 17, 1990. By letter dated December 18, 1990, the applicant requested that the Board postpone the hearing to allow the applicant an opportunity to discuss the application with Advisory Neighborhood Commission (ANC) 2B. The Board granted the request and rescheduled the hearing for April 11, 1990. At the public hearing of April 11, 1990, counsel for the applicant requested a continuance of the application. He indicated that the applicant's initial intent was to apply for variance for the entire structure at 1633 16th Street and the structure at 1631 16th Street, N.W. The public hearing notice only advertised part of the 1633 address. Therefore, counsel for the applicant requested that the application be amended. The Board amended the application and continued the hearing for July 18, 1990.

At the public hearing of July 18, 1990, counsel for the applicant indicated that the architect who was to testify in the applicant's case, would be unable to attend the hearing. However, other parties in the application were present. The Board decided to hear the testimony from the other parties and to continue the application until September 19, 1990, to allow the architect's testimony to be made part of the record.

On September 19, 1990, the applicant's architect testified and the record was closed at the end of the hearing. Mrs. Bennett, the Zoning Commission representative who attended the previous hearing, was not present at this hearing.

The Board was to consider a decision in the application on October 3, 1990. However, the Board deferred its decision until November 7, 1990 to give Mrs. Bennett an opportunity to read the transcript of the architect's testimony.

SUMMARY OF EVIDENCE OF RECORD:

1. The subject application involves two adjacent properties located at 1631 16th Street and 1633 16th Street, N.W. Both properties are located on Lot 807 in Square 193, and they are zoned R-5-C.

2. The property at 1633 16th Street is situated on the southeast corner of 16th and R Streets. It is developed with a four-story plus basement brick row structure built in 1844 as a single-family residence. The structure contains 8,275 gross square feet. It occupies 100 percent of the 5,500 square-foot lot. The property at 1631 16th Street also contains a four-story plus basement brick row structure. It contains 8,795 square feet and occupies approximately 40 percent of the 3,300 square-foot lot.

3. The area surrounding the subject premises is generally characterized by a mix of uses including offices, row dwellings, rooming houses, large and small apartment buildings, several churches, various institutional uses, and several hotels.

4. The applicant purchased the properties in 1977. Each structure contains five or six rooms on each floor. The bathrooms are located at the end of the halls. There is one kitchen in the back room in the basement. The applicant installed a door on the third floor to allow access between the buildings.

5. Since its construction, the property has contained a variety of uses. It has been used as a residence, an embassy, and doctors' offices. When the applicant purchased the property it had a rooming house certificate of occupancy. The property was used as a rooming house and at the same time contained some office use. The applicant testified that the activities occurring in the rooms led him to believe that the property was being used as a bordello. Since purchasing the property, the applicant has used it as offices for engineering services. This use has continued for 13 years.

6. In 1981, the applicant applied for a special exception to use all floors of the subject structures as offices of a nonprofit organization. At the public hearing of September 16, 1981, counsel for the applicant requested a postponement. Advisory Neighborhood Commission 2B, the Dupont Circle Citizens Association and a private citizen appeared at the public hearing and opposed the postponement. The Board denied the request for postponement, and because counsel for the applicant was unprepared to go forward, the application was dismissed without prejudice.

7. In the subject application, the applicant proposes to continue using the structures for office or commercial purposes. He is requesting a variance from the use provisions of 11 DCMR 350.4 which sets forth uses permitted in an R-5-C District.

8. The applicant testified that the property is located in an historic district. He further testified that he has upgraded some of the interior of the structure by fixing fire escapes, repairing doors, etc. He testified that he painted the exterior, but few structural changes were made.

9. The applicant testified that the structures are too large to use as single-family dwellings. They would be too expensive to sell in today's market. Because of this, the structures would likely remain empty.

10. The applicant testified that if the properties were used as rooming houses they would attract the wrong type of people to the neighborhood. The applicant based his opinion on the activities that he witnessed at the site when it was previously used as a rooming house.

11. The applicant and his architect addressed the option of creating 20 one-bedroom apartments. Each apartment would measure about 800 square feet. The architect testified that there are load bearing partitions that he believes would limit the ability to resubdivide the space into decent-sized apartment units. Steel beams may have to be erected to support restructuring. Windows may have to be added to meet building code requirements. The applicant testified that kitchens and bathrooms would have to be added to create the individual units. Both witnesses testified that the structural changes may adversely affect the exterior historic design of the structures.

12. The applicant and the architect testified that it would be cost prohibitive to convert the buildings into apartment units because it would cost a minimum of \$100 per square-foot to renovate the property. To recover a reasonable profit, each unit would have to rent for \$1,600 to \$1,800 per month. The applicant believes that the apartments would be too expensive and would remain unrented. In his view, an empty building would negatively impact the neighborhood.

13. Because there is inadequate space to provide on site parking, the applicant testified about how use of the property affects parking on the street. He testified that the current office use is better for parking conditions in the neighborhood because most of the 35 employees working at the site take public transportation. The five employees who drive to the site park on the street during the day but remove their cars from the area in the evening when area residents return home. The applicant testified that many neighbors support his proposal because office users have less of an impact on parking than residents.

14. The applicant testified that if he converts the buildings to apartments, 12 to 15 cars will be added to the street to compete for parking.

15. The architect testified that people who can afford to pay \$1,600 to \$1,800 a month to rent one of the apartments would be likely to have at least one car and would want to have a parking space. This means that 20 spaces would be needed to accommodate these tenants. He testified that the Zoning Regulations would require a minimum of seven spaces (one space for every three units), and there is only a small amount of space located in the rear near the carriage houses behind the structures. The space is inadequate to provide the required parking.

16. The applicant maintained that the property creates an undue hardship because it will be too expensive to renovate it for residential uses. He testified that the property would remain vacant as a single-family house or as an apartment building because it would be too expensive to purchase or rent.

17. The applicant testified that he has received no complaints about noise, trash or traffic problems related to the property.

18. By report dated July 12, 1990 and through testimony at the hearing, the Office of Planning (OP) recommended approval of the application. OP stated that although it recognizes the need for new housing opportunities within the District of Columbia, the subject premises have not been used for residential purposes for some time. Even before the applicant purchased the properties in 1976, the structures were used as a combination of rooming houses and offices. Accordingly, the Office of Planning is of the opinion that the continued use of the subject premises for offices would not impair the intent, purpose and integrity of the Zoning Regulations. The site is located in an area with a wide variety of uses, including many residential rowhouse-type structures that have been converted to offices. Thus, the continuing office use at this site would not likely adversely impact the neighborhood. Because of the comparatively large size of the subject structures and the fact that they have been used for offices for many years, OP believes that the applicant would be faced with an undue hardship if not permitted to continue to use the premises as office space. The conversion of the properties back to an exclusively residential use (i.e. - rooming houses or apartments) would create a severe burden for the applicant because the interiors would have to be completely reconfigured.

The Office of Planning believes that the subject properties should have never been converted from residential use to office use. However, because the uses changed some time ago, any change back to

residential would likely cause the properties to fall vacant for some time, resulting in structural disrepair and neighborhood erosion.

The Office of Planning is of the opinion that the applicant has met the burden of proof relative to this request for a use variance. Accordingly, the Office of Planning recommends approval of this application contingent upon this variance being limited to this applicant and his stated use, that it should not run permanently with the properties, and that it should expire with any change in current ownership.

19. By report dated July 3, 1990, Advisory Neighborhood Commission (ANC) 2B expressed its opposition to the application. The ANC stated that the applicant alleges an economic hardship rather than a hardship associated with the physical aspects of the property. Therefore, the ANC feels that the applicant has not met the burden of proof established for variance relief.

ANC 2B stated that the claim of economic hardship should be closely scrutinized because along the 16th Street corridor one-bedroom apartments currently rent for between \$1,000 and \$1,500 per month. The ANC further pointed out that any economic hardship imposed on the applicant derives solely from his illegal prior use.

ANC 2B stated that its commissioners are sympathetic to the applicant's awkward position of occupying a building illegally for 13 years. However, the ANC believes that the Board should look at the larger picture in Dupont Circle where there are literally scores of illegal uses in residential structures. The ANC believes that if the Board were to grant this application, it would set a precedent making it difficult to deny similar applications from others in the Dupont Circle area.

ANC 2B believes that because of the precedent-setting effect that this variance would have on R-5-C zoned single-family housing along 16th Street (between Q and U Streets), granting the variance would substantially impair the zone plan and map and would be of substantial detriment to the public good.

The ANC stated that if the Board decides to grant the application it should be limited solely to this applicant and his stated use. It should not run permanently with the property and should expire with any change in the current ownership.

20. By letter dated July 18, 1990 and through testimony at the hearing, the Dupont Circle Citizens Association (DCCA) expressed its opposition to the application. First, DCCA stated that the applicant has failed to demonstrate that he would suffer exceptional and undue hardship if the relief were not granted. Secondly, DCCA stated that the variance should be denied because

the property is residentially zoned. Furthermore, the office use should not be allowed to continue merely because it has existed illegally for many years. To grant the application for this reason would set a bad precedent for the Dupont Circle area. The DCCA requested denial of the application to preserve the residential uses on 16th Street.

21. By letter dated July 18, 1990 and through testimony at the hearing, the Residential Action Coalition (RAC) addressed the issues raised by the applicant and the architect, and expressed opposition to the application.

RAC disagreed with the applicant's assessment that a rooming house use would necessarily involve housing undesirable people. The representative who testified for RAC indicated that the prior rooming house use responded to the needs of low income residents by providing affordable housing in an area where rent was very expensive.

RAC also testified that the building would make fine apartments and would show a handsome profit.

RAC's representative was of the opinion that if the building remained empty, the neighborhood would survive and that it would be better to have the building empty than to have it used for illegal purposes. RAC pointed out that 1627 16th Street remained empty for many years and the block did not fall apart as a result.

RAC's primary concern was the steady loss of residential housing. RAC testified that on the east side of 16th Street, between Corcoran and R Streets, there is only one building out of six still in residential use. All of them formerly contained residential uses. RAC testified that there are many illegal uses in this residential area which has been referred to in The Washington Times as the perfect place for business.

RAC responded to two of the applicant's main arguments: 1) that the office use has existed for several years without any adverse impact on the neighborhood; and 2) it would be too expensive to renovate the property for residential use. RAC pointed out that the applicant has known at least since 1981 that he needed relief from the Board to operate as an office building. Any initial financial loss that he might incur in renovating the property has already been made up by the illegal office use over the years. RAC testified that the Board should not further enrich law breakers. The property should return to residential use and the Board should support a residential zone when (unlike in an SP District) there is no issue of the primary use.

22. A neighbor residing at 1512 R Street, N.W. testified on his own behalf and on behalf of 14 other neighbors in support of

the application. He stated that there is a lack of adequate parking in the area but the existing nonresidential use at the site does not negatively impact on the parking conditions. This is true because the office employees move their cars after normal working hours when the need for parking by residents is greatest. He stated that a strictly residential use involving as many as ten or more units would create additional demands in the most critical times. It is important for the safety of area residents and their guests that parking spaces are available close to the residents' homes.

The neighbor in support also testified that the presence of office tenants and their guests during daytime working hours results in eyes on the street at a time when most area residents are at work elsewhere. The continuation of this use, in combination with the Chastleton Apartments located on the northeast corner of 16th and R Streets, to some extent assures round-the-clock observation of activity, thereby deterring crime in the area.

The supporting neighbors are also concerned that the subject building will become vacant and neglected. It was pointed out that there are other properties in the area that are vacant and have fallen into disrepair. They have become eyesores. Adding nothing to the neighborhood, they attract trash and vagrancy. The supporters stated that while it is true that a renovation of the subject property for residential use would obviate concerns about a vacant building, such a renovation could be several years away and the neighborhood would have to endure the problems generated by a vacant structure for many years.

The neighbor in support also testified that the neighbors who opposed the application at the ANC meeting do not live on the block where the property is located. The neighbors on his block support the application.

Finally, the neighbor in support testified that the proposed use would be compatible with other uses in the area because many nonresidential uses currently exist there.

FINDINGS OF FACT:

1. The current interior layout of the structure is not conducive for use as apartments.
2. To renovate the property for apartment use would require costly internal and external structural changes.
3. The applicant designed the interior of the structure for office use.

4. The applicant knew several years prior to this application that the use of the property was inconsistent with the Zoning Regulations.

5. A rooming house use would not necessarily attract undesirable roomers.

6. Space for parking in the area is inadequate.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a use variance to maintain offices in an R-5-C District. The granting of such a variance requires a substantial showing of undue hardship upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The applicant must further show that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Finally, the applicant must show that the property cannot be used for any purpose for which it was zoned.

The Board concludes that the property was originally designed for use as a single-family dwelling. The Board concludes that while the interior design is not presently suitable for individual apartment units, the physical condition of the property does not create an undue hardship which prohibits the owner from using the property for other purposes allowed in the R-5-C District. The Board concludes that the applicant failed to demonstrate that a rooming house use would create an undue hardship or that the property could not physically be used for a greenhouse; a horticultural nursery; a residence for teachers or staff of a private school; a youth residential care home; a community residence facility; a health care facility; a child development center; or a chancery.

The Board concludes that the applicant's claim of financial hardship cannot alone meet the undue hardship test in a use variance case.

The Board concludes that the office use is less of a burden on parking in the area and that the office use would not be of substantial detriment to the public good. However, the Board concludes that to grant the requested relief would substantially unpair the intent purpose and integrity of the zone plan.

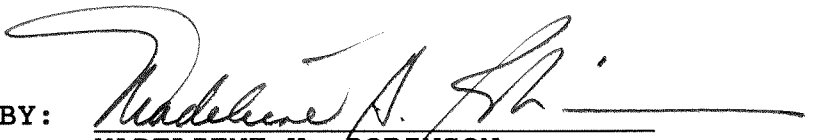
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The Board has accorded ANC 2B the "great weight" to which it is entitled. In light of the foregoing, it is **ORDERED** that the application is hereby **DENIED**.

VOTE: 4-0 (Maybelle Taylor Bennett, Paula L. Jewell, Charles R. Norris and Carrie L. Thornhill to deny; Sheri M. Pruitt not voting not having been present).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: APR 24 1992

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15213Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15213

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 24 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

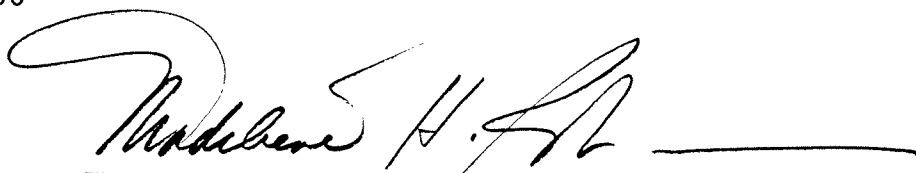
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MADELIENE H. ROBINSON
Acting Director

DATE: APR 24 1992

15213Att/bhs